

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

<b>RAYMOND STACEY, Individually and as Co-</b>	)
<b>Executor of the Last Will of Helen Stacey,</b>	)
<b>Plaintiff,</b>	)
<b>v.</b>	)
<b>CITY OF HERMITAGE; GARY P. HINKSON,</b>	)
<b>Individually; EDWARD STANTON, Individually;</b>	)
<b>RUSSELL V. PENN, JR., Individually; JEFFREY</b>	)
<b>OSBORNE, Individually; ROBERT S. GOELTZ,</b>	)
<b>Individually; JAMES PAT WHITE, Individually;</b>	)
<b>THOMAS W. KUSTER; H. WILLIAM WHITE,</b>	)
<b>III; ECKER, KUSTER, MCCONNELL &amp;</b>	)
<b>EPSTEIN, Attorneys at Law, Individually;</b>	)
<b>CHRISTOPHER FERRY; WATTS &amp;</b>	)
<b>PEPICELLI, Attorneys at Law; JERRY G.</b>	)
<b>CARTWRIGHT, JR., Attorney at Law;</b>	)
<b>RICHARD SEREDAY, ROSEANN SEREDAY,</b>	)
<b>doing business as SEREDAY EXCAVATING;</b>	)
<b>ELIZABETH F. FAIR, Individually and in</b>	)
<b>Official Capacity as Prothonotary of Mercer</b>	)
<b>County, thru her Office, Employees and Agents,</b>	)
<b>Defendants.</b>	)
	)

**MEMORANDUM OPINION AND ORDER**

Pending before the Court for consideration and disposition is PLAINTIFFS' MOTION FOR RECONSIDERATION BY THE COURT OF ITS ORDERS OF AUGUST 1 AND AUGUST 2, 2006, DISMISSING DEFENDANTS AND CHANGING THE CAPTION (*Document No. 107*). Plaintiffs have also submitted an AMENDED COMPLAINT (*Document No. 109*). Defendants Fair and Ekker, Kuster McConnell & Epstein have filed MOTIONS TO DISMISS (*Document Nos. 117, 119*) and supporting briefs. The "City Defendants" have filed an ANSWER (*Document No. 123*). Plaintiff has filed a MOTION FOR LEAVE TO REPLY, AND THE REPLY (*Document No. 122*). Plaintiff's MOTION FOR LEAVE TO FILE REPLY (*Document No. 122*) is GRANTED and the arguments made therein have been considered by the

Court. After full consideration of these documents and the responses filed by defendants (*Document Nos. 111, 113, 114, 115 and 116*), and the opinion of the Court of Appeals dated April 19, 2006, the Court will DENY Plaintiff's MOTION FOR RECONSIDERATION and will STRIKE the AMENDED COMPLAINT. Accordingly, Defendants' MOTIONS TO DISMISS (*Documents 117, 119*) will be DENIED AS MOOT and the ANSWER (*Document No. 123*) will be STRICKEN AS MOOT.

This case arose from the condemnation and subsequent destruction of Plaintiffs' home. The case has been embroiled in extensive legal wrangling and has been the subject of two opinions from the United States Court of Appeals for the Third Circuit ("Court of Appeals"). The Court of Appeals remanded the case to this Court for further proceedings consistent with its opinion dated April 19, 2006, certified and issued in lieu of a formal mandate on July 26, 2006 (*Document No. 103*). On August 1 and 2, 2006, this Court amended the caption of this action to reflect the rulings of the Court of Appeals (*Document Nos. 104, 105*). The Court also ordered Plaintiff to file an amended complaint "limited to the recited surviving claims for the relevant time period(s) set forth in the Opinion and plaintiff must demonstrate standing for all claims and plead in a more definite manner with specificity regarding 'the parties to whom he refers with respect to the remaining claims.'"

Contrary to Plaintiffs' contention, the Court of Appeals resolved the various arguments raised in motions to dismiss on the merits. The Court of Appeals concluded that the only claims which survived the motions to dismiss were:

- (1) claims under § 1983 against the City defendants and Sereday arising from the demolition; (2) claims under § 1983 against the City defendants arising from the imposition of the lien against the Stacey property; and (3) legal malpractice claims against the Staceys' attorneys. Opinion dated April 19, 2006 at 14.

This Court and Plaintiff are bound by the rulings of the Court of Appeals which authorized Plaintiffs to amend the complaint only in two limited respects – to afford Raymond Stacey an opportunity to demonstrate standing, and to specify the parties to whom he refers with respect to the remaining claims. *See* Opinion dated April 19, 2006 at 9, 11. In all other respects, the decision whether or not to permit amendment to the complaint is within the discretion of this Court and leave to amend must be sought by filing an appropriate motion. Fed. R. Civ. P. 15(a).

Plaintiffs' proposed Amended Complaint fails to abide by this Court's Orders and is not consistent with the Court of Appeals' Opinion. Plaintiffs have not sought leave to amend. Indeed, Plaintiffs boldly proclaim that they intend to pursue claims whether or not those parties are listed as defendants in the recast caption. Motion for Reconsideration ¶ 15. Plaintiffs' approach and action in filing the proposed Amended Complaint are totally without authorization. Accordingly, the AMENDED COMPLAINT will be STRICKEN.

Plaintiff shall have the right to file a second amended complaint, limited strictly and solely to the claims authorized by the Court of Appeals, within eleven (11) days of this Order. In the alternative, to the extent that Plaintiffs seek to assert any other claims, they must file an appropriate motion for leave to amend within eleven (11) days of this Order. Defendants shall file responses thereto within ten (10) days thereafter. Counsels' attention is directed to the opinion in *Day v. Moscow*, 769 F. Supp. 472 (S.D.N.Y. 1991), which involved a similar procedural posture.

McVerry, J.

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<b>Official Capacity as Prothonotary of Mercer</b>	)
<b>County, thru her Office, Employees and Agents,</b>	)
<b>Defendants.</b>	)
	)

**ORDER OF COURT**

AND NOW, this 6<sup>th</sup> day of September, 2006, in accordance with the foregoing Memorandum Opinion, PLAINTIFFS' MOTION FOR RECONSIDERATION BY THE COURT OF ITS ORDERS OF AUGUST 1 AND AUGUST 2, 2006, DISMISSING DEFENDANTS AND CHANGING THE CAPTION (*Document No. 107*) is **DENIED** and the Amended Complaint (*Document No. 109*) is **STRICKEN**. Plaintiffs may file a second amended complaint or an appropriate motion for leave to file an amended complaint as aforesaid. Plaintiff's MOTION FOR LEAVE TO FILE REPLY (*Document No. 122*) is **GRANTED**. Defendants' MOTIONS TO DISMISS (*Documents 117, 119*) are **DENIED AS MOOT** and the ANSWER

*(Document No. 123)* is **STRICKEN AS MOOT.**

BY THE COURT:

s/ Terrence F. McVerry  
United States District Court Judge

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